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Appendix A

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

ELECTRONIC CITATION:
1999 FED App. 0208P (6th Cir.)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ALLIED SYSTEMS LTD., a Georgia Limited Partnership,
Plaintiff-Appellant,

v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, LOCAL UNION 327, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Dave Hodgin and Jimmy Neal, its officers, agents and employees and its members who are employed by Plaintiff Allied Systems, Ltd. at its Nashville, Tennessee facilities,
Defendants-Appellees.

No. 98-5862

6th Circuit
Court of Appeals
Filed 6/9/99
Leonard Green, Clerk

Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.
No. 98-00499—Todd J. Campbell, District Judge.

Argued: March 10, 1999

Decided and Filed: June 9, 1999

Before: JONES, SUHRHEINRICH, and MOORE, Circuit Judges.

COUNSEL

ARGUED: R. Ian Hunter, DEAN & FULKERSON, Troy, Michigan, for Appellant. Michael J. Passino, LASSITER, TIDWELL & HILDEBRAND, Nashville, Tennessee, for Appellees. **ON BRIEF:** R. Ian Hunter, Roberto L. Mercado, DEAN & FULKERSON, Troy, Michigan, for Appellant. Michael J. Passino, LASSITER, TIDWELL & HILDEBRAND, Nashville, Tennessee, Michael Hamilton, PROVOST*UMPHREY, Nashville, Tennessee, for Appellees.

OPINION

NATHANIEL R. JONES, Circuit Judge. Plaintiff-Appellant Allied Systems, Ltd. ("Allied") appeals the district court's denial of a preliminary injunction preventing defendants-appellees Teamsters National Automobile Transporters Industry Negotiating Committee, Local 327 (the "union")[3] from engaging in a strike at Allied's terminal facility. Because we agree that the district court's denial of the injunction was proper, we affirm.

I.

The facts underlying this appeal are not in dispute. Allied is in the business of transporting automobiles in the United States and Canada from various rail, plant, and port locations to dealerships. It operates over 100 shipping facilities throughout the country, including one at 743 Harding Street in Nashville, Tennessee ("Harding Facility").

---

[3]The workers comprising Local 327 delegated their bargaining authority to appellee Teamsters National Automobile Transporters Industry Negotiating Committee, which is a union negotiating committee established pursuant to the International Brotherhood of Teamsters' Constitution. For simplicity's sake, we will refer to both collectively as the "union."

Allied also recognizes and has a collective bargaining relationship with the union, which, in turn, represents the workers at Allied's facilities.

For each Allied shipping terminal location, including the Harding Facility, labor relations were governed by a multi-employer, multi-local union collective bargaining agreement known as the National Master Automobile Transporters Agreement ("National Agreement"). Among many other things, the National Agreement contains an "established wage rate" for each facility, which was negotiated at both the national and local levels and approved by the union. Once negotiated and approved, the established wage rate remains effective for the term of the National Agreement. In addition, the National Agreement contains several provisions to the effect that any disputes over the interpretation of the National Agreement are to be submitted to an arbitrator. For example, Article 7, Section 7(a) of the National Agreement provides:

> It shall be the function of the National Joint Arbitration Committee to settle disputes and grievances which arise under the following circumstances:

(1) Involving interpretations of, or disputes over, the provisions of the [National Agreement].

. . .

(4) Disputes and interpretations concerning alleged conflicts in provisions of the [National Agreement] on the one hand and Area Supplements and Riders thereto on the other hand.

J.A. at 144-45.

Pertinent to this appeal, the National Agreement contains a no-strike provision and a comprehensive grievance and arbitration procedure to which disputes arising under the National Agreement are to be submitted. Specifically, Article 7, Section 1 of the National Agreement provides in relevant portions as follows:

> The parties agree that all grievances and questions of interpretation arising from the provisions of this Agreement shall be submitted to the grievance procedure for determination.

> The Unions and Employers agree that there shall be no strike . . . without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise.

J.A. at 139. However, there is an "exception" to the no-strike clause, which reads in relevant part as follows:

> Any disputes the parties are unable to settle shall be referred to the appropriate Automobile Transporters Joint Area Arbitration Committee, except for the following direct violations, which are nondisputable:
>
> (a) *Nonpayment of the established wage rates*, when due, provided for in this Agreement, Supplements or Riders;
>
> . . .
>
> (e) This paragraph does *not* apply to *disputes over the computation of wages or application of wage rates.*

> The Local Union shall give the Employer a seventy-two (72) hour written notice . . . prior to taking any strike action authorized by the Section.

Id. (emphasis added). Interpretation of these subsections is the crux of the dispute in this appeal.

On October 1, 1997, Allied purchased Ryder Automobile Carrier Group and its subsidiary corporations including Commercial Carriers, Inc. With the purchase, Allied acquired several additional shipping facilities, including one located at 600 Veritas Street in Nashville ("Veritas Facility"). Allied reports that after the purchase, it possessed several "dual" and redundant shipping terminals in many cities, including Nashville. Allied management decided it would be economically efficient to consolidate several, if not all, of the dual terminals in most cities. This decision directly affected the operations at the Harding and Veritas Facilities in Nashville. In November 1997, Allied announced its intention to merge the two Nashville facilities sometime in early 1998.

The parties agree that because the Harding and Veritas facilities were operated by two different companies prior to October 1997, there were a number of differences in the terms

and conditions of employment at the facilities. One such difference was the facilities' established pay rate for labor. Although the parties resolved many other differences concerning the consolidation of the facilities (such as seniority determinations) through dispute resolution, Allied refused to negotiate the issue of the two different established pay rates. Instead, according to Allied, prior arbitration decisions in the industry established that when two terminals were merged, the conditions that applied at the terminal into which the operations were physically merged were the conditions that continued and applied at the surviving terminal. After Allied decided to merge the Harding and Veritas operations into the physical Harding Facility, it therefore determined that the Harding established pay rate would govern all workers at the "new" merged facility.

Allied acknowledges that the wage rates at the Harding and former Veritas Facilities were "dissimilar," but contends that the net effect of the Harding wage rate was still higher than the Veritas Facility. Nevertheless, the union was displeased by Allied's decision to discontinue paying the established wage rate from the Veritas Facility. Pursuant to the National Agreement, the union issued a 72-hour strike notice on May 29, 1998. On June 4, 1998, picketers appeared at the Harding Facility with signs reading (among other things) "Failure of Allied Systems to Pay Established Wage

Rates."

Later that day, Allied filed a complaint in the district court under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and a motion for a temporary restraining order enjoining the Union from striking at the Harding Facility. Following a hearing that afternoon, the district court granted the motion for a TRO and issued an order to show cause why a preliminary injunction should not be issued against the union for violating the no-strike clause of the National Agreement.

On June 11, 1998, the district court held a hearing on the motion for the preliminary injunction under § 301. In a ruling issued from the bench, the district court denied Allied's request for a preliminary injunction.

This timely appeal followed.

II.

This court will review a district court's grant or denial of a preliminary injunction for an abuse of discretion. *Schenck v. City of Hudson*, 114 F.3d 590, 593 (6th Cir. 1997). An abuse of discretion exists when the district court "applies the incorrect legal standard, misapplies the correct legal

standard, or relies upon clearly erroneous findings of fact." *Id.* This court will also review the district court's findings of fact for clear error, and its conclusions of law *de novo*. *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir. 1996). Finally, this court will conduct a *de novo* review of the district court's interpretation of a collective bargaining agreement. *Salary Policy Employee Panel v. Tennessee Valley Auth.*, 149 F.3d 485, 489 (6th Cir. 1998).

III.

A.

A district court has the authority under § 301 to compel specific performance of a collective bargaining agreement requiring the arbitration of grievances in a labor dispute. *See* 29 U.S.C. § 185(a). However, § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, significantly curtails a district court's ability to issue an injunction against labor strikes and work stoppages. The pertinent portion of the Act reads:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute

> to prohibit any person or persons participating or interested in such dispute . . . from . . .
>
> > (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence[.]

29 U.S.C. § 104. This court has recognized that the "anti-injunction provisions of the Norris-LaGuardia Act were intended to protect workers in the exercise of organized economic power." *Crowe & Assocs., Inc. v. Bricklayers & Masons Union Local No. 2 (In re Crowe & Assocs., Inc.)*, 713 F.2d 211, 216 (6th Cir. 1983) (per curiam). As the Supreme Court stated: "Congress acted to prevent injunctions of the federal courts from upsetting the natural interplay of the competing economic forces of labor and capital." *Brotherhood of R.R. Trainmen v. Chicago River*, 353 U.S. 30, 39 (1957).

Occasionally, § 301 of the LMRA and § 4 of the Norris-LaGuardia Act come to direct loggerheads when a district court is asked to enjoin a labor strike which the employer contends violates a collective bargaining agreement.

The Supreme Court first addressed the inherent conflict between the two statutes in *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970). In *Boys Markets*, the Court reasoned that "a no-strike obligation, express or implied, is the *quid pro quo* for an undertaking by the employer to submit grievance disputes to the process of arbitration." *Id.* at 248. The Court further opined that "[a]ny incentive for employers to enter into such an arrangement is necessarily dissipated if the principal and most expeditious method by which the no-strike obligation can be enforced is eliminated." *Id.* Accordingly, the Court reconciled § 301 of the LMRA and the anti-injunction provisions of the Norris-LaGuardia Act by creating a "narrow" exception to the Norris-LaGuardia Act: federal courts are permitted to enjoin strikes only when such action would enforce terms of a collective bargaining agreement specifically negotiated by the parties. *See id.* at 253-54.

In this appeal, Allied maintains that the decision to utilize the wage rates from the former Harding Facility to the new "merged" facility was a "dispute[] over the computation of wages [and/or] application of wage rates" within the meaning of Article 7, Section 1(e) of the no-strike clause in the National Agreement. Thus, in Allied's view, the union was precluded from striking under the terms of the National Agreement, and the district court should have issued the

injunction. In the alternative, Allied contends that all disputes over interpretation of the National Agreement were themselves to be arbitrated pursuant to Article 7, Section 7(a). The union responds, and the district court agreed, that the strike fell within the exception of Article 7, Section 1(a) of the no-strike provisions, as the strike was "over what can be characterized as the abandonment or unilateral repudiation and nonpayment of previously negotiated established wage rates for the Veritas facility." J.A. at 117 (Bench Ruling).

When seeking a *Boys Markets* injunction, the employer has the burden of showing that it is entitled to such an injunction. *In re Crowe & Assocs., Inc.*, 713 F.2d at 215; *Plain Dealer Publ'g Co. v. Cleveland Typographical. Union No. 53*, 520 F.2d 1220, 1227-28 (6th Cir. 1975); *Parade Publications, Inc. v. Philadelphia Mailers Union No. 14*, 459 F.2d 369, 373 (3d Cir. 1972). This court has articulated the analysis to be followed when determining whether a party is entitled to an injunction against a labor strike or work stoppage within the meaning of *Boys Markets*:

> First, the controversy must involve or grow out of a labor dispute within the meaning of Section 4 of the [Norris-LaGuardia] Act. Second, a full evidentiary hearing must be held. Third, the court must find that the

> dispute underlying the controversy is subject to binding arbitration under the terms of the collective bargaining agreement. Finally, the traditional equitable bases for injunctive relief must be met. A court has jurisdiction to issue an injunction only where all four of the above steps have been completed and satisfied.

International Union United Auto. Workers v. Lester Eng'g Co., 718 F.2d 818, 822 (6th Cir. 1983). The parties agree that only the third factor is of relevance in this appeal.

Although the parties creatively articulate several issues for us to consider, the essence of their legal dispute can be distilled to one simple question: was the district court correct in denying Allied's request for an injunction? We agree that the district court did not abuse its discretion below.

B.

Allied first argues that the district court should have issued the injunction because of a strong congressional policy favoring arbitration of labor disputes, and because Article 7, Section 7(a) of the National Agreement mandates that disputes over conflicting provisions are themselves to be resolved through arbitration. Since *Boys Markets*, the

Supreme Court has emphasized that the anti-injunction provisions of the Norris-LaGuardia Act are to be given a "broad interpretation" and that the *Boys Markets* exception is to be recognized "only in limited situations where necessary to accommodate the Act to specific federal legislation or paramount congressional policy." *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n,* 457 U.S. 702, 708 (1982). Allied is correct that congressional policy has long favored the arbitration of labor disputes. *See generally Textile Workers Union v. Lincoln Mills,* 353 U.S. 448 (1957); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1960); *United Steelworkers v. American Mfg. Co.,* 363 U.S. 564 (1960). However, it must be remembered that a congressional policy favoring arbitration "does not reflect a congressional policy favoring the issuance of anti-strike injunctions pending arbitration." *Waller Bros. Stone Co. v. United Steelworkers,* 620 F.2d 132, 135 (6th Cir. 1980). As a corollary point, it is obvious that no congressional policy is furthered by forcing a party to a collective bargaining agreement to arbitrate issues for which it explicitly retained the right to utilize economic weapons in labor negotiations.

Similarly, Allied's argument that it is entitled to an injunction on the basis that Article 7, Section 7(a) calls for

arbitration of all disputes over interpretation of the National Agreement's provisions is also unavailing. The Supreme Court has made clear that the mere arbitrability of the issue of whether a strike violates a no-strike provision does not entitle the employer to a *Boys Markets* injunction. *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 409-10 (1976). We expounded the point in *Waller Brothers*: "the fact that a strike may arguably violate the provisions of the collective bargaining agreement, and may thus present an arbitrable issue does not justify the issuance of a *Boys Markets* injunction." *Waller Bros.*, 620 F.2d at 136; *see also Complete Auto Transit, Inc. v. Reis*, 614 F.2d 1110, 1113 (6th Cir. 1980), *aff'd* 451 U.S. 401 (1981).

Most collective bargaining agreements contain arbitration clauses. *Truck Drivers Local 705 v. Schneider Tank Lines Inc.*, 958 F.2d 171, 174 (7th Cir. 1992). That a collective bargaining agreement calls for arbitration over disputes regarding construction of the agreement is hardly unusual. *See, e.g., National Wrecking Co. v. Kumerow*, 606 F. Supp. 374, 375 (N.D. Ill. 1985) (denying injunction even though agreement provided "for binding arbitration of disputes and grievances with respect to the application and construction of the agreement"); *National Mine Serv. Co. v. United Steelworkers.*, 385 F. Supp. 856, 859 (N.D. W.Va. 1974) (denying injunction despite broad scope of grievance

procedure). In the case *sub judice,* the underlying dispute is whether Allied's decision to use the Harding Facility wage rates constituted the non-payment of the Veritas rates, or was an exercise in the application of wage rates. But as far as a *Boys Markets* injunction is concerned, only resolution of *this* dispute is relevant to our inquiry.

It can be argued that whether Article 7, Section 7(a) comes into effect is a natural and logical extension of the parties' underlying dispute in this case. However, we believe it unwise to tread beyond the core underlying dispute between the parties, as such determinations "would embroil the courts in endless circular reasoning trying to decide where arbitrability starts and where it stops." Comment, *Labor Injunctions Pending Arbitration: A Proposal to Amend Norris-LaGuardia,* 63 TUL. L. REV. 1681, 1694 n.85 (1989). Additionally, the Supreme Court's decision in *Jacksonville Bulk Terminals* supports the view that a federal court must constrain itself solely to the arbitrability of the underlying dispute in determining whether to issue a *Boys Markets* injunction. In that case, the workers refused to handle any cargo bound to or coming from the former Soviet Union in protest of the 1979 invasion of Afghanistan. The Court held that the underlying dispute between the parties was a political dispute "plainly not arbitrable under the collective bargaining agreement." *Jacksonville Bulk Terminals,* 457 U.S. at 721.

The Court reached this conclusion despite the fact that the collective bargaining agreement in that case contained "both a broad no-strike clause and a provision requiring the resolution of *all* disputes through a grievance procedure, ending in arbitration." *Id.* at 706 (emphasis added). If the collective bargaining agreement in *Jacksonville Bulk Terminals* was insufficient to entitle the employer to a *Boys Markets* injunction, then the same must be said for Article 7, Section 7(a) in this case.

C.

Allied's remaining argument is that it was entitled to a *Boys Markets* injunction because, in its view, the underlying dispute was over an arbitrable issue–namely, the computation and/or application of wage rates. We have previously held that *Boys Markets* injunctions are to be granted only when "it clearly appears to the trial judge that the dispute which underlies the strike is subject to a no-strike obligation." *Waller Bros.*, 620 F.2d at 137; *accord Matson Plastering Co., Inc. v. Operative Plasterers & Cement Mixers Int'l Ass'n, Etc.*, 633 F.2d 1307, 1308 (9th Cir. 1980) (*Boys Market* injunction proper only when a "clear" and "undisputed" contractual duty to arbitrate the underlying dispute exists).

We are not convinced that Allied has met its burden

of showing that the dispute was clearly and undisputably over an arbitrable issue. The parties agree that several necessary changes were effectuated as a result of the merging of the two Nashville facilities including dispatch procedures and payroll policies. Likewise, it is also agreed that the parties submitted grievances to resolve seniority disputes to an arbitration panel. However, there is no evidence that the union engaged in a work stoppage for reasons other than the wage rate controversy. Such should not be surprising, because the no-strike exceptions of Article 7, Section 1 only reserved the right to strike in limited situations, including the nonpayment of established wage rates.

At the very least, reasonable minds may differ as to whether Allied's decision to use the Harding Facility wage rate constituted (as the union asserts) the nonpayment of the Veritas Facility established wage rate, or (as Allied asserts) the application of wage rates. Both the union's and Allied's interpretation of the National Agreement have merit. However, so long as the right to strike is interrelated with an ambiguity in a collective bargaining agreement, a federal court is without jurisdiction to issue a *Boys Market* injunction. As the Second Circuit has succinctly pronounced:

> Where the collective agreement, as here, excepts from the requirement of arbitration

> certain types of contract violations and provides that the union retains the right to strike with respect to such violations, no injunction can issue against a strike where the union presents a colorable claim that such violations have occurred.

Standard Food Prods. Corp. v. Brandenburg, 436 F.2d 964, 966 (2d Cir. 1970). We find this reasoning particularly fitting in the case *sub judice,* because we believe that the union has made a colorable claim that the strike was not over an arbitrable issue.

Our decision in *Waller Brothers* presented a similar scenario involving differing meritorious interpretations of a collective bargaining agreement. In that case, the bargaining agreement contained a dispute resolution procedure for all disputes, but provided that wage rates were not subject to arbitration, and that the union reserved the right to strike in the event of a disagreement on wages. *Waller Bros.,* 620 F.2d at 134. In addition, the bargaining agreement also provided a schedule of wage rates for different job classifications. *Id.* The strike began when the employer purchased new packing equipment and the union believed that it was entitled to negotiate a new wage rate for the operator of the packing equipment. *Id.* at 133. The employer argued that the new

packing machine operating-position was essentially a revised version of an old job that had been listed on the wage rate schedule. *Id.*

We vacated the district court's issuance of a *Boys Market* injunction because the employer had not clearly demonstrated that its interpretation of the contract was correct. While acknowledging that the employer's position had "some force," we noted that the parties' "underlying dispute [was] inescapably over wage rates." *Id.* at 137. Because the union had reserved the right to strike over wage rates disputes, and because the resolution of the question of whether the strike was in fact in violation of the no-strike clause could not be "fully addressed in an action seeking a preliminary injunction," we concluded that the district court's issuance of the injunction was improper.[4] *Id.* at 136-37.

The Ninth Circuit's decision in *Matson* is also illustrative of the high burden an employer faces when

---

[4] Allied argues that *Waller Brothers* is distinguishable from the present case because the National Agreement contained a more comprehensive grievance resolution procedure calling for arbitration of disagreements over the construction of the National Agreement's provisions per Article 7, Section 7(a). For the reasons explained in section III (B) of this opinion, Allied's continued reliance on Article 7, Section 7(a) is misguided.

seeking a *Boys Market* injunction. In that case, the union engaged in a work stoppage over the employer's failure to pay an assessment for late payment of contributions to the union's trust fund. *Matson*, 633 F.2d at 1309. It was undisputed that the collective bargaining agreement permitted a strike for failure to make the contribution payments themselves. *Id.* The employer presented various arguments why the agreement did not allow a strike--presumably because the union only retained the right to strike for failure to pay the contributions, not failure to pay the assessments. *Id.* The Ninth Circuit vacated the district court's injunction for essentially the same reason as *Waller Brothers*–absent a showing that the union's actions clearly offended its no-strike obligations under the collective bargaining agreement, a "district court has no jurisdiction to enjoin strike activity[.]" *Id.*

As was the situation in *Waller Brothers* and *Matson*, the interpretation of the National Agreement with regards to the propriety of the union's strike in this case is "far from clear." Contrary to Allied's protestations, however, our affirming the district court's judgment is hardly a resolution of the merits of the underlying dispute. We do not hold that the union indeed had the right to strike over Allied's decision to forgo the wage rates used at the former Veritas Facility in favor of the Harding Facility rates. We hold only that Allied

has not demonstrated that its interpretation of the National Agreement is so clearly and undisputably correct to warrant the issuance of a *Boys Market* injunction. Accordingly, the district court did not abuse its discretion in denying Allied's request for a preliminary injunction. If Allied wishes to seek recourse against the union, it must do so in an unfair labor practice action on the merits.

IV.

For the reasons stated herein, the district court's denial of Allied's request for injunctive relief is **AFFIRMED**.

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ALLIED SYSTEMS, LTD., a Georgia Limited Partnership	)	
v.	)	NO. 3:98-0499
	)	JUDGE CAMPBELL
TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, LOCAL UNION NO. 327, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America, DAVE HODGIN, and JIMMY NEAL, its officers, agents and employees and its members who are employed by Plaintiff ALLIED SYSTEMS, LTD. At its Nashville Tennessee facilities	)	**FILED June 11, 1998**

ORDER

For the reasons stated from the bench, the Motion for Preliminary Injunction (Docket No. 3) is DENIED.

It is so ORDERED.

/s/

TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 58 and/or Rule 79 (a), FRCP, on 6-12-98. By: TS

Appendix C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ALLIED SYSTEMS, LIMITED Plaintiff,	•	
	•	Civil Case # 3-98-0499
vs.	•	June 11, 1998
	•	9:00 a.m.
TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, LOCAL 327, ET AL, Defendants.	•	**FILED** **June 12, 1998**

TRANSCRIPT OF RULING
BEFORE THE HONORABLE TODD J. CAMPBELL

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Official Court Reporter:

John W. Tummel, RPR
801 Broadway, Rm. A-839
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THE COURT: Thank you for your patience. I have formed an opinion and I am going to announce my decision and reasoning and an order will be entered based upon what I am about to describe.

We have pending before the Court the plaintiff's motion for preliminary injunction and the following reasons I am denying the motion.

Some of the basic facts in this case are that the plaintiff, Allied, acquired Ryder slash CCI in October of 1997. CCI had a facility in Nashville at Veritas Street, Allied had one at Harding Place.

Allied has now merged these two facilities. The degree of the meger is contested but at least portions of it have been merged.

The defendant unions want to strike and the plaintiff Allied wants a preliminary injunction for the reasons I will get in to more fully in a moment.

We start with the basic idea that the Norris-LaGuardia Act prohibits injunctions by federal courts against strikes in certain labor disputes. That statute is found at 29, USC, Section 104.

There is a narrow exception to the Norris-LaGuardia Act. One of those exceptions is Boys Market versus Retail Clerks found at 90, Supreme Court, 1583. This is an exception to the Norris-LaGuardia Act. It generally says where the parties agree to a mandatory binding arbitration, strikes can be enjoined if the usual TRO requirements are otherwise satisfied.

At Boys Market an injunction generally can only issue if the dispute over which the union is striking is subject to arbitration.

Here we have the agreement is embodied in three different documents. One is the National Master Agreement which is Exhibit A to the complaint and

Exhibit 1 to this hearing; the Central Southern area supplement is Exhibit 1 to this hearing and the rider for Local 327 which is Exhibit 21.

The parties agree that what I will call the agreement, which is all three of the requirements, requires mandatory binding arbitration subject to limited exceptions. That is established by Article 7, Section 13 and Article 7, Section 8, Subsection E. There is a no strike clause at Article 7, Section 1, and these are citations to the master agreement.

There is an exception to the arbitration and no strike provisions. Those are set out in Article 7, Section 1, Subsections A through D and then there is an exception to the exception which is Subsection E. Those bear some fleshing out.

Item A is an exception to the no strike clause that says nonpayment of the established wage rates when due provide for this agreement, supplements or riders.

And item E which I described as the exception to the exception says, this paragraph does not apply to disputes over the computation of wages or application of rates.

And the scope of those items are hotly contested.

In this case the plaintiff's theory is roughly as follows: That the dispute between the parties is about what is the established rate. There is the Allied Harding Place rate and the CCI Veritas Street rate. The plaintiff contends that the dispute is within Subsection E and that it is a dispute about the application of rates and also takes the position that it is a dispute about contract interpretation, particularly Article 1, Section 3 that deals with the transfer of company title or interest which plaintiff takes the position must be arbitrated under Article 7, Section 13.

Defendants' theory is that the exception in Subsection A, the nonpayment of the established wage rates, applies in this instance.

The Court issued a TRO on June 4th. The Court has now heard additional evidence today and the parties' expression of their argument is more fully developed in this Court's understanding of their expression and it is more fully developed.

Examples of some of the items that have been more clearly articulated or at least better understood is the parties agree there were two established rates in effect as that term is used in Article 7, Section 1 at the time that the two facilities were merged. There is agreement, in other words, that there were two establish rates at the time of the merger.

There also has been testimony about the strikers are displaying on their picket signs. They say they are striking over the failure to pay established rates.

Another expression what the strike is over was set out in the 72 hour strike notice, and the Court finds that to be ambiguous. The 72 hour notice refers both to Article 1, Section 3 of the transfer title provision as well as Article 7, Section 1 A, the failure to pay established rate provision.

The Court finds that based upon the evidence heard today and all the documents submitted, that including the witnesses for the union and arguments of their lawyers, that it is now clear what the strike is over. The strike is over what can be characterized as the abandonment or unilateral repudiation and nonpayment of previously negotiated established wage rates for the Veritas facility.

The Court finds the strike is over the total repudiation and nonpayment of the established Veritas rates.

The strike is not over their application. As far as the plaintiff is concerned those rates no longer exist. The strike is over the fact that they have been abolished.

Because the strike is not over whether Allied simply did not apply the right rates within the negotiated established rates, Subsection E doesn't apply.

The Court finds that Subsection A of Article 7, Section 1 does apply and the union is entitled to strike over the non-establishment – excuse me – the nonpayment of established rates under Article 7, Section 1 A. Because it is within the scope of that grievance – the dispute is within the scope of that provision.

At any event, under the Waller Brothers case versus United Steelworkers, 690, Fed 2nd, 132, 1990, the issue presented is greatly in doubt and the Court finds it would be an abuse of discretion to issue an injunction under those circumstances.

So, accordingly, the TRO is vacated and an order will be entered that says words to this effect, as stated from the bench the motion for preliminary injunction is denied.

Anything further I need to entertain from the parties?

MR. HAMILTON: No, Your Honor.

MR. PASSINO: No, Your Honor.

THE COURT: All right. This conclude the hearing then.

Thank you.

REPORTER'S CERTIFICATE

I, John W. Tummel, Official Court Reporter for the United States District Court, Middle District of Tennessee, with office at Nashville, hereby certify that I recorded on the Stenograph Shorthand Machine the proceedings held in open court on June 11, 1998, in the matter of: ALLIED SYSTEMS, LTD. VS. TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, LOCAL UNION 327, ET AL; Nashville Civil Case No. 3-98-0499; and that the proceedings in connection with this hearing were reduced to typewriting under my supervision; and that the foregoing is a true and correct transcript of the same.

This the 12th day of June, 1998.

/s John W. Tummel/
Official Court Reporter

*** CERTIFIED TRANSCRIPT ONLY IF SIGNED IN BLUE INK. ***

Appendix D

28 UNITED STATES CODE SECTION 1254

§ 1254 Court of Appeals; certiorari; certified questions

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Appendix E

29 UNITED STATES CODE SECTION 101

NORRIS-LAGUARDIA ACT

§ 101 Issuance of restraining orders and injunctions; limitation; public policy

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

Appendix F

29 UNITED STATES CODE SECTION 102

NORRIS-LAGUARDIA ACT

§ 102 Public policy in labor matters declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free

from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

Appendix G

29 UNITED STATES CODE SECTION 103

NORRIS-LAGUARDIA ACT

§ 103 Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, is declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United Sates and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

Appendix H

29 UNITED STATES CODE SECTION 104

NORRIS-LAGUARDIA ACT

§ 104 Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Appendix I

29 UNITED STATES CODE SECTION 105

NORRIS-LAGUARDIA ACT

§ 105 Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies

No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title.

Appendix J

29 UNITED STATES CODE SECTION 106

NORRIS-LAGUARDIA ACT

§ 106 Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members and agents

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Appendix K

29 UNITED STATES CODE SECTION 107

NORRIS-LAGUARDIA ACT

§ 107 Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect –

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same

after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial

and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting or any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a

claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Appendix L

29 UNITED STATES CODE SECTION 108

NORRIS-LAGUARDIA ACT

§ 108 Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Appendix M

29 UNITED STATES CODE SECTION 109

NORRIS-LAGUARDIA ACT

§ 109 Granting of restraining order or injunction as dependent or previous findings of fact; limitation on prohibition including in restraining order and injunctions

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

Appendix N

29 UNITED STATES CODE SECTION 110

NORRIS-LAGUARDIA ACT

§ 110 Review by court of appeals of issuance or denial of temporary injunctions record

Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside expeditiously.

Appendix O

29 UNITED STATES CODE SECTION 113

NORRIS-LAGUARDIA ACT

§ 113 Definitions of terms and words used in chapter

When used in this chapter, and for the purposes of this chapter –

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interest therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

Appendix P

29 UNITED STATES CODE SECTION 185

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a

labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process

The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.